ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-98
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	RM 9101

AT&T Reply on Petition for Expedited Rulemaking

AT&T Corp.

Mark C. Rosenblum
Roy E. Hoffinger
Leonard J. Cali
Richard H. Rubin

Its Attorneys

Room 3252I3
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4481

July 30, 1997

TABLE OF CONTENTS

Page

SUMMARY ii

I. The ILECs' Oppositions To The Petition Are Baseless 1

A. The Commission Has Clear Authority To Initiate The Proposed Rulemaking, Which Will Foster Action In The States 2
B. The Requested Rules Would Not Require ILECs to Redesign Their OSSs 6
C. ILECs' Claims of Current Compliance Are Unsupported 8

II. The Measurement Categories And Methodologies Suggested In The Petition Are The Appropriate Starting Point For Commission Rules 13

III. ILEC Reports Should Be Provided Monthly, And Reporting Rules Must Assure the Accuracy And Validity Of The Reported Data 15

IV. Effective Remedies Are Needed For ILEC Nonperformance . 17

V. Industry Fora Should Establish Uniform Technical Standards 19

CONCLUSION 20

SUMMARY

The commenters agree that incumbent LECs are required to provide new entrants with nondiscriminatory access to ILEC Operations Support Systems ("OSS"). However, the non-ILEC commenters show that ILECs have consistently failed to provide the information necessary to measure whether they comply with this fundamental requirement. Thus, there is an urgent need for the Commission to act promptly to require ILECs to provide accurate and reliable data regarding the performance of their OSSs for themselves, their affiliates, their customers and for CLECs.

As shown in Part I below, the ILECs' oppositions to the Petition are baseless. First, despite the ILECs' claims, the Commission clearly has the authority to issue rules regarding compliance with the nondiscrimination requirements of Section 251(c), and the Court of Appeals has expressly upheld the Commission's authority to do so. Second, the rules sought by Petitioners would not require ILECs to redesign their existing support systems. Rather, the proposed rules focus on the establishment of measurement categories and methodologies that will be used to determine whether ILECs have met their nondiscrimination obligations. Contrary to the ILECs' assertions, the default performance benchmarks referenced by Petitioners would only be used if an ILEC fails to provide the required information about its own performance. Third, some

ILECs' claims that new rules are not necessary because they already provide nondiscriminatory access to their OSSs must be dismissed, precisely because they are not supported by the information sought in the Petition.

Part II below shows that numerous comments agree with AT&T that the measurement categories and methodologies proposed by LCUG are an excellent starting point for Commission rules. In addition, it recognizes that there are additional measurements suggested by other parties that the Commission should seriously consider in the upcoming rulemaking.

Part III demonstrates that the comments support AT&T's showing that ILECs should be required to provide monthly reports of their performance and that statistical validation and auditing of ILEC performance data are critical. Part IV demonstrates that new entrants and others support AT&T's position regarding the need for effective remedies. Finally, Part V shows there is general agreement with AT&T's position that industry bodies, rather than the Commission, should in the first instance be charged with establishing technical OSS standards.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-98
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)	)	RM 9101

AT&T Reply on Petition for Expedited Rulemaking

Pursuant to the Commission's Public Notice (DA 97-1211, released June 10, 1997) ("Notice") AT&T Corp. ("AT&T") hereby replies to the comments on the Petition for Expedited Rulemaking filed by LCI International Telecom Corp. ("LCI") and the Competitive Telecommunications Association ("CompTel") ("Petition").[1]

I. The ILECs' Oppositions To The Petition Are Baseless.

The commenters, including the incumbent LECs ("ILECs"), do not dispute that Section 251 and the Commission's Local Competition Order require ILECs to provide new entrants with nondiscriminatory access to ILECs' Operational Support Systems ("OSSs").[2] Predictably, however, the ILEC

[1] A list of the commenters and the abbreviations used to refer to each is set forth in Attachment 1. All references herein to LCI's comments are to the corrected version of its comments filed on July 16, 1997.

[2] E.g., U S WEST p. 11 (Commission's parity obligation "certainly requires that ILECs create efficient and effective access to their legacy systems"); USTA, p. 15

(footnote continued on next page)

commenters oppose the Petition on several baseless grounds. First, contrary to the Eighth Circuit's explicit affirmance of the Commission's authority to establish rules regarding OSSs, they incorrectly assert that the proposed rules would be unlawful or upset work that is already ongoing in the states. Second, they mischaracterize the Petition by claiming that it would require them to redesign their existing systems, rather than simply provide information on their actual performance. Third, a number of ILECs ironically assert -- without the actual proof the Petition seeks to elicit -- that no Commission action is needed because they are already providing nondiscriminatory access to their OSSs. All of these claims are wrong.

A. The Commission Has Clear Authority To Initiate The Proposed Rulemaking, Which Will Foster Action In The States.

Several ILECs claim that the Commission does not have authority to issue the proposed rules or that the proposed rulemaking would hinder progress in the states.[3] These

---

(footnote continued from previous page)

("[c]learly, the Commission's Orders require incumbent LECs to provide access to OSS functions on a nondiscriminatory basis, including electronic interface [sic] where available"); Ameritech, p. 16; GTE, p. ii; ITTA, p. 7; Pacific and Southwestern, p. 3.

[3] E.g., Pacific and Southwestern, p. 10; Ameritech, pp. 10-13; BellSouth, p. 15.

claims are baseless.[4]

Contrary to ILEC claims,[5] there is no question that the Commission has authority to adopt the type of rules proposed in the Petition. The Eighth Circuit expressly affirmed the Commission's authority under Section 251(c)(3) to define the network elements that must be unbundled under the Act, specifically including OSSs.[6] Further, the Court affirmed the Commission's rules adopted under Section 251(c)(4)(B) "regarding the incumbent LECs' duty not to prohibit, or to impose unreasonable limitations on, the resale of telecommunications services."[7] Thus, there is no question that the Commission may adopt rules defining ILECs' nondiscrimination duties with respect to OSS support for both unbundled network elements ("UNEs") and resale services.

---

[4] The fact that state proceedings and negotiations cannot resolve all OSS-related issues is aptly demonstrated by TWComm (pp. 12-13), which states that its interconnection negotiations have not enabled it "to provide service on a par with the ILEC [because] TWComm has often been forced to accept [contract provisions] so it can enter the market in a timely manner without spending the additional time and money required for arbitration."

[5] E.g., GTE, p. ii; Pacific and Southwestern, n.9.

[6] Iowa Utilities Board v. FCC, Docket No. 96-3321, 8th Cir. July 18, 1997 (slip op.), pp. 130-134; id., n.10.

[7] Id., p. 152. See also California PUC p. 5 (subsection 251(d)(1) authorizes the Commission to establish regulations to implement the requirements of Section 251); KMC, p. 4.

Such rules would also be fully consistent with the Commission's statements in the Local Competition Order, in which it recognized (¶ 308) that "some national rules regarding nondiscriminatory access [to UNEs] will reduce the cost of entry and speed the development of competition," and (¶ 311) that it may need to examine the need for ILEC reporting requirements in the future. Thus, SNET (p. 3) is clearly wrong that the Commission has rejected the possibility of adopting rules such as those proposed in the Petition. CompTel (p. 2) correctly states that "[t]he time has come for the Commission to make good on this promise."

The State commenters also welcome Commission action at this time. The California PUC (p. 2) expressly supports Commission action on these issues, because it recognizes that "[t]here is a need to put to rest the national debate on what these [OSS performance and technical] standards should be." In addition, the California PUC (id.) agrees that "broad national standards can be of great assistance to states." Moreover, it (p. 7) also understands that rules defining appropriate measurement categories and methodologies would assist ILECs, because many of these companies operate in multiple states and would benefit from consistent measurement requirements. Thus, the California PUC (p. 8) supports the adoption of Commission rules which "address both the systems to which competitors should have

access, and the categories for performance standards." In addition, the Wisconsin PSC (p. 3) specifically requests Commission guidance on (1) the relative extent of automation expected from ILECs; (2) interpretation of the meaning of "substantially the same manner" in the Commission's orders requiring ILECs to provide nondiscriminatory OSS support for new entrants; (3) necessary restrictions on changes to interfaces; and (4) timeframes within which national standards, once adopted, must be implemented.[8]

Further, CPI (p. 1), a consumer-focused not-for-profit organization, states that "[a]ccess to operations support systems may well be the Achilles heel of local competition," and (pp. 3-4) supports the adoption of specific methods to measure ILEC performance.[9] CPI (p. 7) recognizes that "[i]f new entrants (collectively) are expected to win only 30% of the access lines in the next five years, they must win, on a net basis, 42,000 access lines every business day for the next five years." Without rules such as those requested in the Petition, this will be impossible.

Finally, consistent with the suggestion of the PUC commenters,[10] LCI does not propose that the Commission adopt

---

[8] On the latter point, see also WorldCom, p. 15.

[9] See also GSA, pp. 7-8.

[10] California PUC, p. 7; Wisconsin PSC, p. 3.

detailed rules governing the ILECs' performance.[11] Rather, LCI (pp. 6-7) states that "if an ILEC's provisioning to itself is lower than reasonable . . . state commissions are the appropriate bodies to establish reasonable standards for ILECs within their jurisdiction." This is exactly the type of cooperative approach urged by the California PUC (p. 8).[12]

B. The Requested Rules Would Not Require ILECs to Redesign Their OSSs.

The ILECs also misstate the main purpose of the Petition, which is to require them to provide information that is necessary to determine whether they are complying with the nondiscrimination requirements of Section 251(c)(3) and (c)(4). Contrary to the ILECs' claims,[13] the rules sought by the Petition would not require ILECs to redesign their existing OSSs. Rather, the Petitioners, supported by AT&T and virtually all non-ILEC commenters, ask the Commission to establish the measurement categories and methodologies that ILECs must use to demonstrate their

---

[11] But see CPI, p. 6 (Commission "should establish minimum standards where none exist. States should be able to adopt OSS standards that are stronger . . .").

[12] See also NARUC, p. 3 (states should be allowed to impose more stringent requirements).

[13] E.g., Pacific and Southwestern, p. ii (Petition seeks to require ILECs "to retool their networks to meet different or higher standards for their competitors' convenience"); BellSouth, p. 3; GTE, p. 17.

compliance with the statute, not general levels of ILEC performance.[14] Thus, the Petition focuses on how ILECs must demonstrate that they provide new entrants with nondiscriminatory access to their OSSs, not on the specific levels at which those systems should be required to perform.[15]

The Petition (p. 2) explains that the specific performance benchmarks referenced therein were intended to be used only "in the absence of the ILECs' disclosing their own performance standard, measurements and historical data," to determine whether they comply with the Act's nondiscrimination requirements. LCI's Comments (p. 6) amplify this position and clearly state that the recommended

---

[14] See LCI, p. 1, clarifying that the Petition focuses on "measurement categories" and "measurement formulas." In this context, the Commission should note that formulas for calculating ILEC performance cannot be developed in the absence of detailed definitions applicable to the measurements ILECs must make.

[15] See LCI, p. 1 ("[w]hile the Commission has stated the need for OSS parity, existing rules do not explain how to determine whether an ILEC is complying with the OSS provisions of the FCC's Order implementing Section 251 of the Act" (emphasis added)). Because the rules proposed by Petitioners are a part of the ILECs' nondiscrimination obligations, they would not expand the competitive checklist of Section 271, as some ILECs (e.g., Bell Atlantic and NYNEX, pp. 3-4; Ameritech, p. 17) mistakenly assert, and no different rules are required for smaller ILECs (see, e.g., Alliant, p. 2; ITTA, p. 3).

"default performance intervals"[16] should be used "only when an ILEC has failed or refused to supply appropriate data for any measurement category or categories" (emphasis added). LCI (id.) specifically acknowledges that if an ILEC provides the required information regarding its performance, "the 'parity' required by the Act and this Commission's orders would be measured by the ILEC's own performance intervals."[17] Thus, the Petition does not suggest that any ILEC must modify its existing OSSs, as long as it provides necessary information about its own performance for itself and for its competitors.[18]

C. ILECs' Claims Of Current Compliance Are Unsupported.

The ILECs' most ironic claim is that the proposed rules are unnecessary because ILECs are already providing nondiscriminatory access to their OSSs. Indeed, the comments of several incumbents, including Southwestern

---

[16] Because some of these measurements will track performance other than "intervals" it would be more appropriate to refer to "default performance benchmarks."

[17] Emphasis added. AT&T concurs with this view. See also WorldCom, p. 11 (ILECs would not be held to default performance benchmarks if they measure and report their OSS performance as proposed); Sprint, p. 8.

[18] See also ALTS, p. 12 (concurring with AT&T's view (pp. 38-39) that the Commission may also use default performance benchmarks as a "safe harbor" in connection with a 271 application when a BOC does not provide sufficient comparative data to prove nondiscrimination).

(pp. 7-9 and Attachments 1-4) and Ameritech (p. 7-8)[19] are largely devoted to such claims.[20] As shown in AT&T's comments (pp. 8-11), however, the DOJ has found that Southwestern and Ameritech have failed to demonstrate nondiscrimination, precisely because of the lack of sufficient measurements of their OSS performance.

The ILECs' claims of compliance simply cannot be validated unless an ILEC provides the specific information described in the Petition. For example, Pacific asserts that it has complied with the Commission's OSS requirements, but it admits that it is merely "working with" new entrants on application-to-application interfaces such as EDI.[21]

---

[19] Incorporating by reference significant portions of its pending Section 271 application for Michigan.

[20] See also GTE, pp. 8-12; BellSouth, pp. 4-14 but compare ACSI, pp. 5-6 (explaining how BellSouth's failure to provide nondiscriminatory access to OSSs in Georgia crippled ACSI's initial market efforts in Georgia) and KMC, Linn Aff. pp. 1-2 (describing substantial difficulties in its experiences with BellSouth's ordering and billing processes) and Winstar, pp. 5-6 (describing problems with BellSouth's ordering processes). Some claims of compliance are rebutted in the comments themselves. For example, although SNET (p. 4) asserts that "significant progress" has been made in Connecticut, ITTA (pp. 8-9) the trade association to which SNET belongs, admits that "the goal of making SNET's systems compatible with competitive interconnection . . . is still incomplete (emphasis added)."

[21] Pacific and Southwestern, p. 4. Pacific's claim (id., p. 3) that AT&T failed to honor its contractual commitment to test and use EDI is flatly false. AT&T provided Pacific with EDI specifications last January, but Pacific has not responded with a counterproposal or a gap analysis of the differences, despite numerous requests from AT&T. In a

(footnote continued on next page)

Moreover, although Pacific's accompanying affidavit (Stankey Aff., p. 3) states that Pacific uses the "same measures" it uses internally to take its measurements to determine parity, Pacific has never given such measurements to AT&T, despite AT&T's requests.[22] Pacific also ignores that the "rigorous performance measures"[23] for which it must provide monthly reports under the AT&T interconnection agreement were only the inadequate measures proposed by Pacific itself that were adopted as the result of a "baseball" arbitration process. That the California PUC, which conducted that arbitration, has requested additional guidance from the Commission confirms its reservations about the adequacy of these measures.[24]

(footnote continued from previous page)

recent letter, Pacific stated that it had provided AT&T with EDI specifications, but it did not identify the individual to whom they had been sent or offer to provide a duplicate set, notwithstanding AT&T's request.

[22] Pacific also demanded that AT&T pay more than $13 million because it claimed that AT&T was seeking "above parity" provisioning intervals for UNEs. AT&T responded by stating that all it sought was parity provisioning intervals, and AT&T asked Pacific to provide the "interval" information it had used in calculating the amount allegedly due. Incredibly, Pacific claimed it had no such information.

[23] Pacific and Southwestern, p. 5.

[24] Many of the other statements in Pacific's accompanying affidavit are also either misleading or inaccurate, or both. For example, Pacific ignores that the "reformat[ting]" of CLEC orders referenced in the affidavit (Stankey Aff, p. 14)

(footnote continued on next page)

Similarly, BellSouth's claim (p. ii) that its interconnection agreement with AT&T "already provides nondiscriminatory access to its OSSs" is belied by its acknowledgment (p. 17) that its initial performance report will not even be submitted until September 1997.[25] Moreover, in testimony before the Georgia PSC,[26] BellSouth admitted that its initial performance targets for delivery of UNEs "were set unilaterally" and that it is "continuing to negotiate" on how to establish intervals for UNEs. It also stated that the internal data it had initially

---

(footnote continued from previous page)

requires the full re-keying of such orders by Pacific personnel. In addition, despite the references (id., p. 8) to Pacific's participation in the industry standards process, Pacific appears to be using business rules that do not comply with OBF guidelines. And notwithstanding Pacific's stated goal of providing CLECs access to customer service records ("CSRs") within 4 hours (id., p. 13) -- even though Pacific's internal personnel have immediate access to CSRs -- Pacific's information to AT&T for May indicates that it met its goal only 7.34% of the time for business customers and 70.59% of the time for residential customers.

[25] See also BellSouth, p. 18 (noting that "full-scale sampling [of performance results] has not yet been completed").

[26] Consideration of BellSouth Telecommunications, Inc.'s Services Pursuant to Section 271 of the Telecommunications Act of 1996, Georgia PSC, Docket No. 6863-U, Testimony of William Stacy, BellSouth, pp. 4072-79. This paragraph does not purport to be a complete summary of the deficiencies in BellSouth's proposed reporting processes. Rather, it only demonstrates that BellSouth cannot credibly support its claim that it is currently providing parity access to its OSSs.

collected for some measurements were not collected "programmatically" in the manner suggested by the DOJ, so that it had to "come back and start over" and the data re-collection process was not complete. Moreover, many of the data it collected did not include comparative information concerning CLECs. In addition, AT&T has disputed the disaggregation of information proposed by BellSouth, because it is inadequate to assure that its performance is nondiscriminatory.[27]

In contrast, U S WEST's comments highlight the need for the type of information sought in the Petition. For example, U S WEST (p. 3) states that

> "actual reporting of ILEC performance associated with OSS access . . . is a far more direct and superior method of determining nondiscrimination than the establishment of national performance standards."

Critically, U S WEST (p. 8) agrees that "reporting [of ILEC performance] can in fact provide reviewing parties with the baseline to determine whether or not any material deviation

---

[27] See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Michigan, CC Docket No. 97-137, Consultation of the Michigan Public Service Commission, June 9, 1997 ("MPSC Michigan Consultation"), pp. 31-32 (recognizing need for disaggregated measurements to assure that "meaningful parity comparisons" can be made).

from parity exists."[28] This is just what the Petition seeks. [29]

II. The Measurement Categories And Methodologies Suggested In The Petition Are The Appropriate Starting Point For Commission Rules.

Many commenters concur with AT&T that the minimum measurement categories and measurement methodologies proposed by LCUG form an excellent starting point for the proposed rulemaking.[30] As AT&T (pp. 11-21) showed,[31] these measurements focus on key aspects of performance needed to determine whether an ILEC's performance is nondiscriminatory.[32] AT&T also notes that on July 19, Bell

---

[28] U S WEST (p. 21) also recognizes that "[p]rocedures and systems based on human intervention are exceedingly costly and have a greater potential for error." This validates CLECs' urgent requests for full electronic flowthrough of data in application-to-application interfaces, especially in all cases where the ILEC operates in a fully electronic mode.

[29] See also Ameritech, p. 4 (noting that Ameritech performs numerous measurements of its OSSs and reports monthly on the results). The issue that needs to be resolved in the proposed rulemaking is the adequacy and validity of those measurements for all ILECs.

[30] E.g., LCI, Appx B; MCI, p. 3; Excel, p. 13 (adopt LCUG guidelines as an interim requirement).

[31] See also, ALTS, pp. 5-6; WorldCom, p. 8.

[32] AT&T also agrees that the measurement formulas in Appendix B to LCI's Comments are generally appropriate to define the identified measurements. AT&T recognizes, however, that it may be appropriate for the parties and the Commission to take additional steps to assure that the data supplied by the ILECs for each measurement will accurately determine the existence (or absence) of parity.

Atlantic and NYNEX submitted a letter to the Commission in conjunction with their pending merger application,[33] in which they proposed to make and report on most of the measurement categories suggested by LCUG. Although the Bell Atlantic/NYNEX proposal contains some significant deficiencies,[34] the proposal itself demonstrates a recognition that substantial --and previously not provided -- information on ILEC performance is essential to assure that new entrants have a reasonable opportunity to compete in the local services market.

The comments also raise additional measurement issues. For example, some facilities-based CLECs state that the LCUG measurement categories do not fully account for the ILECs' performance in providing individual UNEs and other capabilities that are essential to their needs.[35] AT&T also

---

[33] Ex parte letter from Thomas J. Tauke (NYNEX) and Edward D. Young, III (Bell Atlantic) to Kathleen Levitz (FCC), NSD-L-96-10, dated July 19, 1997.

[34] The most significant deficiencies in the Bell Atlantic/NYNEX proposal include: (i) the complete absence of measurement objectives and formulas; (ii) the omission of some significant measurement categories, such as accuracy measurements for ordering and billing, systems availabliity, and performance of nertwork elements; (iii) the proposal only offers to provide quarterly, rather than monthly, reports; (iv) the data retention periods are insufficient; and (v) the proposal does not provide for any audits, either by independent auditors or by CLECs.

[35] E.g., TCG, p. 6-7; ALTS, pp. 6-11 (noting also the need to associate the results for a CLEC's order of all UNEs and ILEC functions associated with a single customer order);

(footnote continued on next page)

agrees with other commenters, including Pacific, who state that there should be class of service and geographic parameters for the measurement categories, to assure that ILEC performance is at parity for all market segments.[36] In addition, MCI (p. 7) notes and supports the adoption of additional measurement categories recently suggested by the DOJ. AT&T suggests that the Commission give serious consideration to all of these proposals during the upcoming rulemaking.

III. ILEC Reports Should Be Provided Monthly, And Reporting Rules Must Assure the Accuracy And Validity Of The Reported Data.

There is widespread agreement among non-ILEC commenters that ILECs should be required to provide currently available information about their performance immediately.[37] In

---

(footnote continued from previous page)

TWComm, pp. 4-9. See also U S WEST, n.30 (acknowledging that facilities-based carriers are entitled to parity).

[36] Pacific and Southwestern, Stankey Aff., p. 3 ("service parity must be measured (1) by class of service (e.g., residence, business); (2) geographic area; and (3) over a comparable time period"); see also ACSI, p. 8; MCI, p. 8; Sprint, p. 11; WorldCom, p. 9. And see MPSC Michigan Consultation, p. 32 ("[s]eparate measurements for different customer classes, geographic areas or service products may be required" to determine parity).

[37] Wisconsin PSC, p. 1 ("strongly support[ing] disclosure of performance standards which ILECs have established for their own customer service representatives," and "historical data and measurement criteria supporting those standards"); AT&T, pp. 22-24; CPI, pp. 3; 6; Excel, pp. 7, 10; GSA, p. 9;

(footnote continued on next page)

addition, many commenters agree with AT&T that ILEC reports should be provided monthly, to assure that ILEC performance remains at appropriate levels.[38] Monthly reporting is especially critical during the early stages of local competition, because new entrants will not be able even to enter the market effectively if lack of ILEC OSS support prevents them from providing service that is equal in quality to the ILECs' service. As CPI (p. 4) states,

> "consumers have grown accustomed to the ease with which they can choose among competing long distance carriers. They will hold the same expectations of local competition and will react badly to bungled attempts by competing carriers to complete simple transactions like ordering, adding services and scheduling repairs."

The comments also support AT&T's view (pp. 21-22, 25-28) that the Commission's rules must assure that the data provided by ILECs is both accurate and statistically valid. As ACSI (pp. 7-8) states, measurement processes "must be created which will enable CLECs to monitor ILEC performance, by statistical measurement of service quality both in

---

(footnote continued from previous page)

GST, pp. 9-10; LCI, pp. 5-6; MCI, p. 7; Telco, p. 8; Winstar, p. 3.

[38] CompTel, p. 5; LCI, p. 8; MCI, p. 7; Sprint, p. 10; TRA, pp. 4-5; WorldCom, p. 6. See also Ameritech, p. 4 (referencing its own monthly reports).

absolute terms and relative to the service levels afforded to the ILEC itself."[39]

Further, the ILEC data must be available to CLECs and regulators and performance reports should be supported by an appropriate audit trail[40] and subject to independent audits.[41] The data underlying the ILECs reports must also be retained for a period of at least two years; otherwise critical information could disappear before regulators and affected parties have an opportunity to verify the reported data. Finally, as TRA (p. 7) states, there is no basis for the ILECs to claim that information about their own performance - which is the foundation for determining nondiscrimination and parity -- is proprietary.[42]

IV. Effective Remedies Are Needed For ILEC Nonperformance.

The comments also demonstrate that effective remedies for violations of the Commission's nondiscrimination requirements are essential. CPI (p. 11) recognizes that

---

[39] See also ALTS, p. 4 (measurements must be "detailed and unambiguous"); Sprint, p. 10 (ILEC reports should include "actual numeric values and quantities" to enable statistical analysis); WorldCom, pp. 8-9 (["[a] uniform national methodology would not only promote more accurate reporting of OSS performance, it would also permit direct comparisons of performance among the incumbent LECs").

[40] ALTS, p. 5.

[41] AT&T, pp. 28-29; MCI, p. 8; Sprint, p. 10; WorldCom, p. 9.

[42] See also Petition, p. 24.

"[t]oday's incumbent providers still have a strong incentive to discriminate against potential competitors by providing inferior access to OSS features." Moreover, as ALTS (p. 16) states, "fines and forfeitures are institutionally difficult to assess, and provide only a modest deterrent to ILEC behavior." Both thus join AT&T (p. 31-33) and others[43] in encouraging the Commission to adopt significant nonexclusive remedies for ILEC noncompliance, including suspension of interLATA authority (at least for new customers) and substantial fines that reflect the competitive injury that results from an ILEC's failure to provide nondiscriminatory access to OSSs.[44]

---

[43] E.g., CompTel, p. 6; LCI, p. 10; MCI. Pp. 10-12; WorldCom, pp. 12-13.

[44] Even if the Court of Appeal's dicta that the Commission lacks authority to enforce local competition rules in complaint proceedings under Section 208 were applicable to Commission rules the Court expressly found were authorized by the Act -- which AT&T doubts -- that should not deter the Commission from adopting the remedies suggested here. Among other things, the Commission has independent authority under Section 271 to enforce the rules proposed herein and in AT&T's Comments against the Bell Operating Companies ("BOCs"). See, e.g., Section 271(d)(6)(A)(ii) (granting "Commission authority" to "impose a penalty" for violating conditions required for approving the BOC's application). Any remedies adopted in the proceeding requested by the petitioners could be used in enforcement proceedings under Section 271(d)(6). See also AT&T, pp. 31-32.

V. Industry Fora Should Establish Uniform Technical Standards.

The commenters generally agree that the Commission should not assume unilateral responsibility for establishing technical standards for OSSs.[45] This rare consensus indicates that all parties believe that the existing industry fora are working effectively to meet the needs of all interested parties. However, several commenters[46] agree with AT&T (pp. 35-37) that the Commission should monitor industry activities and establish appropriate deadlines for industry bodies to conclude their work. Such actions are appropriate to assure that the industry completes the necessary work within a reasonable time to support the development of local competition.[47]

---

[45] E.g., AT&T, pp. 34-35; Bell Atlantic and NYNEX, p. 2; BellSouth, pp. 19-20; CompTel, p. 8; GTE, pp. 4-6; LCI, p. 7; MCI, p. iii; Sprint, pp. 2-3; USTA, p. 7; WorldCom, p. 14.

[46] MCI, pp. 14-15; Sprint, p. 5; WorldCom, p. 15.

[47] Some commenters (CPI, p. 7; CompTel. p. 8; GSA, p. 13; MCI, p. 13) also suggest that the Commission conduct a negotiated rulemaking to adopt rules for OSSs. Sprint (p. iii), however, opposes such a process. All but one of the parties favoring a negotiated rulemaking agree with AT&T (pp. 37-38) that any such proceeding must be conducted under clearly defined procedures, including strict deadlines, and that the Commission should act promptly to establish the necessary rules if the parties cannot reach consensus (CPI, p. 8; CompTel, pp. 8-9; MCI, p. 13-14).

CONCLUSION

For the reasons stated herein and in AT&T's Comments, the Commission should promptly initiate a proceeding to establish rules that implement the nondiscrimination requirements of Section 251(c) as they relate to OSSs and other ILEC support services and adopt rules consistent with AT&T's comments.

Respectfully submitted,

AT&T Corp.

By _____

Mark C. Rosenblum
Roy E. Hoffinger
Leonard J. Cali
Richard H. Rubin

Its Attorneys

Room 3252I3
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4481

(908) 953-8360 (Fax)

July 30, 1997

ATTACHMENT 1

List of Commenters in CC Docket No. 96-98, RM 9101

Aliant Communications Co.
American Communications Services, Inc. ("ACSI")
Ameritech
Association for Local Telecommunications Services ("ALTS")
AT&T Corp.
Bell Atlantic & NYNEX
BellSouth Corp.
People of the State of California and the Public Utilities Commission of the State of California ("California PUC")
Competition Policy Institute ("CPI")
Competitive Telecommunications Association ("CompTel")
Excel Communications
General Communication, Inc.
General Services Administration ("GSA")
GST Telecom
GTE Service Corp. ("GTE")
Independent Telephone & Telecommunications Alliance ("ITAA")
Kansas City Fibernet & Focal Communications
KMC Telecom Inc. & RCN Telecom Services, Inc. ("KMC")
LCI International Telecom Corp. ("LCI")
MCI
National Association of Regulatory Utility Commissioners ("NARUC")
Pacific Bell, Nevada Bell, & Southwestern Bell ("Pacific and Southwestern")
Southern New England Telephone ("SNET")
Sprint Corp.
Telco Communications Group ("Telco")
Telecommunications Resellers Association ("TRA")
Teleport Communications Group Inc. ("TCG")
Time Warner Communications Holdings Inc. ("TWComm")
United States Telephone Association ("USTA")
US ONE Communications Corp.
US WEST
USN Communications, Inc.
Winstar Communications
Wisconsin Public Service Commission ("Wisconsin PSC")
WorldCom, Inc.